

1 Ekwan E. Rhow - State Bar No. 174604
erhow@birdmarella.com
2 Timothy B. Yoo - State Bar No. 254332
tyoo@birdmarella.com
3 Ray S. Seilie - State Bar No. 277747
rseilie@birdmarella.com
4 BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
DROOKS, LINCENBERG & RHOW, P.C.
5 1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561
6 Telephone: (310) 201-2100
Facsimile: (310) 201-2110
7

8 Attorneys for Plaintiff
WESTLAKE SERVICES, LLC d/b/a
WESTLAKE FINANCIAL SERVICES
9

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
12

13 WESTLAKE SERVICES, LLC d/b/a
WESTLAKE FINANCIAL SERVICES,

14 Plaintiffs,

15 vs.

16 CREDIT ACCEPTANCE
17 CORPORATION,

18 Defendant.
19
20
21
22
23
24
25
26
27
28

Case No. 2:15-cv-07490 SJO (MRWx)

**PLAINTIFF WESTLAKE SERVICES,
LLC'S OBJECTIONS TO CREDIT
ACCEPTANCE CORPORATION'S
APPLICATION TO TAX COSTS**

Honorable S. James Otero

Complaint Filed: September 24, 2015

Westlake Services, LLC (“Westlake”), pursuant to Local Rule 54-2.2 and the United States District Court for the Central District of California Bill of Costs Handbook, hereby submits its Objections to Credit Acceptance Corporation’s (“CAC”) Application to the Clerk to Tax Costs, and states as follows:

CAC requested \$53,785.60 in the Application to the Clerk to Tax Costs (the “Application”). (Dkt. No. 263.) Westlake objects to the recovery of the following costs for depositions as unrecoverable as taxable costs pursuant to Local Rule 54 3.5:

Itemization and Documentation of Costs (Dkt. No. 263-1)		Description of Item	Amount Claimed	Basis for Objection
Page 9	Exhibit 2	Exhibits Scanned-Searchable – OCR	\$157.15	Not identified as taxable under 54-3.5
Page 10	Exhibit 2	Litigation Package	\$45.00	Not identified as taxable under 54-3.5
Page 11	Exhibit 2	Original with 1 Certified Transcript (expedited delivery rate of \$11.05 per page versus normal delivery rate of \$3.50)	\$3,480.75	Not allowed as taxable under 54-3.5
Page 11	Exhibit 2	Realtime Services	\$519.75	Not allowed as taxable under 54-3.5
Page 11	Exhibit 2	Litigation Package	\$45.00	Not identified as taxable under 54-3.5
Page 12	Exhibit 2	Original with 1 Certified Transcript (expedited delivery rate of \$8.40 per page versus normal delivery rate of \$3.50)	\$1,579.20	Not allowed as taxable under 54-3.5

1	Page 12	Exhibit 2	Realtime Services	\$310.20	Not allowed as taxable under 54-3.5
2					
3	Page 12	Exhibit 2	Litigation Package	\$45.00	Not identified as taxable under 54-3.5
4					
5					
6	Page 13	Exhibit 2	Realtime Services	\$544.50	Not allowed as taxable under 54-3.5
7					
8	Page 13	Exhibit 2	Litigation Package	\$45.00	Not identified as taxable under 54-3.5
9					
10					
11	Page 15	Exhibit 2	Realtime Services	\$90.75	Not allowed as taxable under 54-3.5
12					
13	Page 15	Exhibit 2	Litigation Package	\$45.00	Not identified as taxable under 54-3.5
14					
15	Page 16	Exhibit 2	Original with 1 Certified Transcript	\$2,664.90	Not allowed as taxable under 54-3.5
16					
17			(<u>expedited</u> delivery rate of \$9.45 per page versus normal delivery rate of \$3.50)		
18					
19	Page 16	Exhibit 2	Realtime Services	\$1395.90	Not allowed as taxable under 54-3.5
20					
21					
22	Page 16	Exhibit 2	Litigation Package	\$45.00	Not identified as taxable under 54-3.5
23					
24	Page 17	Exhibit 2	Original with 1 Certified Transcript	\$2,201.85	Not allowed as taxable under 54-3.5
25					
26			(<u>expedited</u> delivery rate of \$9.45 per page versus normal delivery rate of \$3.50)		
27					
28					

1	Page 17	Exhibit 2	Realtime Services	\$454.35	Not allowed as taxable under 54-3.5
2					
3	Page 17	Exhibit 2	Litigation Package	\$45.00	Not identified as taxable under 54-3.5
4					
5					
6	Page 18	Exhibit 2	Original with 1 Certified Transcript	\$1,502.55	Not allowed as taxable under 54-3.5
7					
8			(expedited delivery rate of \$9.45 per page versus normal delivery rate of \$3.50)		
9					
10	Page 18	Exhibit 2	Realtime Services	\$787.05	Not allowed as taxable under 54-3.5
11					
12	Page 18	Exhibit 2	Litigation Package	\$45.00	Not identified as taxable under 54-3.5
13					
14					
15	Page 19	Exhibit 2	Realtime Services	\$155.10	Not allowed as taxable under 54-3.5
16					
17	Page 19	Exhibit 2	Litigation Package	\$45.00	Not identified as taxable under 54-3.5
18					
19					
20	Page 20	Exhibit 2	Original with 1 Certified Transcript	\$3,383.10	Not allowed as taxable under 54-3.5
21					
22			(expedited delivery rate of \$9.45 per page versus normal delivery rate of \$3.50)		
23					
24	Page 20	Exhibit 2	Realtime Services	\$1,181.40	Not allowed as taxable under 54-3.5
25					
26	Page 20	Exhibit 2	Litigation Package	\$45.00	Not identified as taxable under 54-3.5
27					
28					

1	Page 21	Exhibit 2	Realtime Services	\$122.10	Not allowed as taxable under 54-3.5
2					
3	Page 21	Exhibit 2	Litigation Package	\$45.00	Not identified as taxable under 54-3.5
4					
5					
6	Page 22	Exhibit 2	Original with 1 Certified Transcript	\$1,127.70	Not allowed as taxable under 54-3.5
7					
8			(expedited delivery rate of \$6.30 per page versus normal delivery rate of \$3.50)		
9					
10	Page 22	Exhibit 2	Realtime Services	\$295.35	Not allowed as taxable under 54-3.5
11					
12	Page 22	Exhibit 2	Litigation Package	\$45.00	Not identified as taxable under 54-3.5
13					
14					
15	Page 23	Exhibit 2	Original with 1 Certified Transcript	\$2,747.65	Not allowed as taxable under 54-3.5
16					
17			(expedited delivery rate of \$8.95 per page versus normal delivery rate of \$3.50)		
18					
19	Page 23	Exhibit 2	Realtime Services	\$598.65	Not allowed as taxable under 54-3.5
20					
21	Page 23	Exhibit 2	Litigation Package	\$45.00	Not identified as taxable under 54-3.5
22					
23					
24	Page 24	Exhibit 2	Original with 1 Certified Transcript	\$1,743.30	Not allowed as taxable under 54-3.5
25					
26			(expedited delivery rate of \$5.85 per page versus normal delivery rate of \$3.50)		
27					
28	Page 24	Exhibit 2	Realtime Services	\$551.30	Not allowed as

1					taxable under 54-3.5
2					
3	Page 24	Exhibit 2	Litigation Package	\$55.00	Not identified as taxable under 54-3.5
4					
5	Page 25	Exhibit 2	Original with 1 Certified Transcript	\$1,606.50	Not allowed as taxable under 54-3.5
6					
7			(expedited delivery rate of \$9.45 per page versus normal delivery rate of \$3.50)		
8					
9	Page 25	Exhibit 2	Realtime Services	\$561.00	Not allowed as taxable under 54-3.5
10					
11					
12	Page 25	Exhibit 2	Litigation Package	\$45.00	Not identified as taxable under 54-3.5
13					
14	Page 26	Exhibit 2	Certified Transcript	\$2,112.50	Not allowed as taxable under 54-3.5
15					
16			(expedited delivery rate of \$6.25 per page versus normal delivery rate of \$3.50)		
17					
18	Page 26	Exhibit 2	Realtime Services	\$625.30	Not allowed as taxable under 54-3.5
19					
20	Page 26	Exhibit 2	Litigation Package	\$55.00	Not identified as taxable under 54-3.5
21					
22					
23	Page 26	Exhibit 2	Scanning (Color)	\$12.00	Not identified as taxable under 54-3.5
24					
25	Page 26	Exhibit 2	Exhibits Scanned-Searchable – OCR	\$248.85	Not identified as taxable under 54-3.5
26					
27	Page 27	Exhibit 2	Original with 1 Certified Transcript	\$3,987.90	Not allowed as taxable under
28					

		(expedited delivery rate of \$9.45 per page versus normal delivery rate of \$3.50)		54-3.5
Page 27	Exhibit 2	Realtime Services	\$1,392.60	Not allowed as taxable under 54-3.5
Page 27	Exhibit 2	Litigation Package	\$45.00	Not identified as taxable under 54-3.5
Page 28	Exhibit 2	Expedite of Original Transcript: David Hricik	\$1,030.15	Not allowed as taxable under 54-3.5
		TOTAL	\$39,956.35	

A. Costs Sought Are Either Not Identified or Not Allowed under the Local Rules

CAC's objectionable deposition costs fall into three general categories:

- (1) expedited transcripts; (2) costs of video or audio technicians (Realtime Services); and (3) ambiguous litigation package/scanning costs.

Local Rule 54-3.5 states which deposition-related costs are (and are not) taxable:

L.R. 54-3.5 Depositions. Costs incurred in connection with taking oral depositions, including:

(a) The cost of the original and one copy of the transcription of the oral portion of all depositions used for any purpose in connection with the case, **including non-expedited transcripts**, the reporter's appearance fee, fees for binding, bates stamping, non-expedited shipping and handling, processing fee, ASCII disks, production and code compliance charge, electronic transmission charge, miniscripts and witness handling charges, but not including the cost of videotaping or recording depositions unless otherwise ordered by the Court;

(b) The reasonable fees of the deposition reporter, including reporter fees when a deponent fails to appear at a scheduled deposition, the notary, and any other persons required to report or transcribe the deposition, **but not including the costs of video or audio technicians unless otherwise ordered by the Court;**

1

2 L.R. 54-3.5.

3 Here, Local Rule 54-3.5 expressly states that costs are taxable only for “non-
 4 expedited transcripts.” In other words, award costs associated with *expedited* transcripts
 5 are not allowed. CAC groups both expedited and non-expedited costs in its Application.
 6 In Exhibit 2 of the Declaration of Douglas A. Smith (“Smith Decl.”), the Court can
 7 immediately recognize which transcripts were expedited and the added premium cost
 8 charged:

Bill To: Wandy Liu Skadden Arps Slate Meagher & Flom LLP 4 Times Sq, 45th Floor New York, NY, 10036		Invoice #: CA2882308 Invoice Date: 2/15/2017 Balance Due: \$0.00	
Case: Westlake Services, LLC v. Credit Acceptance Corporation		Client Matter # : CAC 022180-76	
Job #: 2514013 Job Date: 2/9/2017 Delivery: Expedited			
Billing Atty: Wandy Liu			
Location: Skadden Arps Slate Meagher & Flom LLP 300 S. Grand Ave Suite 3200, Room 3246 Los Angeles, CA 90071			
Sched Atty: Douglas A. Smith, Esq. Skadden Arps Slate Meagher & Flom, LLP			

Witness	Description	Units	Quantity	Price	Amount
	Original with 1 Certified Transcript	Page	188.00	\$8.40	\$1,579.20

17 (Dkt. No. 263-1.) By contrast, the rate for normal delivery is immediately apparent when
 18 reviewing a non-expedited invoice:
 19

Bill To: Patrick G. Rideout, Esq. Skadden Arps Slate Meagher & Flom LLP 4 Times Sq, 45th Floor New York, NY, 10036		Invoice #: CA2894007 Invoice Date: 2/27/2017 Balance Due: \$0.00	
Case: Westlake Services LLC, Et Al v. Credit Acceptance Corporation			
Job #: 2533935 Job Date: 2/15/2017 Delivery: Normal			
Billing Atty: Patrick G. Rideout, Esq.			
Location: Bienenstock Court Reporters 30800 Telegraph Road Suite 2925 Bingham Farms, MI 48025			
Sched Atty: Ray Seillie Bird Marella Boxer Wolpert Nessim Dooks & Lincenberg			

Witness	Description	Units	Quantity	Price	Amount
	Certified Transcript	Page	330.00	\$3.50	\$1,155.00

28 Thus, amounts associated with expedited transcripts are not recoverable as taxable costs

1 pursuant to the plain language of Local Rule 54-3.5(a). Therefore, such fees totaling
2 \$29,168.05 are not recoverable as taxable costs against Westlake.

3 CAC also asks for costs related to “Realtime Services.” But Local Rule 54-3.5(b)
4 specifically does not allow costs of “video or audio technicians unless otherwise ordered
5 by the Court.” In other words, a prevailing party cannot seek technical fees, such as a
6 videographer, in its Application. “Realtime Services” is technology which enables an
7 attorney to read, search, and annotate the testimony using a computer, phone, or tablet
8 while the deposition is taking place. In short, it allows an instant text display of what is
9 being said by a witnesses. Such technology certainly falls outside of the “reasonable fees”
10 and falls within the exclusion of video or audio technicians as stated in Local Rule 54-
11 3.5(b). And the inclusion of “Realtime Services” at depositions was not ordered by the
12 Court. Thus, such fees totaling \$9,585.30 are not recoverable as taxable costs against
13 Westlake.

14 Finally, CAC attempts to tax costs for document scans and ambiguous charges titled
15 “Litigation Package.” Both appear to relate to costs associated with electronic discovery.
16 Local Rule 54-3.5(a) provides a comprehensive list of electronic discovery charges that are
17 taxable: “fees for . . . bates stamping, . . . processing fee, ASCII disks, production and code
18 compliance charge, electronic transmission charge” However, scanning and
19 “litigation package” costs are not among them. Furthermore, all of CAC’s Veritext
20 invoices already include electronic discovery-related titled “Production & Processing.”
21 Thus, such scanning fees of \$418.00 and “Litigation Package” fees of \$740, totaling
22 \$1,158.00, are not recoverable as taxable costs against Westlake.

23 For all of the foregoing reasons, Westlake respectfully requests that this Court deny
24 CAC’s Application to Tax Costs and strike no less than \$39,956.35 from CAC’s total

25 //

26 //

27 //

28 //

1 requested costs of \$53,785.60, and grant such further relief as this Court deems fair and
2 proper.

3
4 DATED: January 26, 2018

Ekwan E. Rhow
Timothy B. Yoo
Ray S. Seilie
Bird, Marella, Boxer, Wolpert, Nessim,
Drooks, Lincenberg & Rhow, P.C.

5
6
7
8
9 By: /s/ Timothy Yoo

10 Timothy B. Yoo
11 Attorneys for Plaintiff WESTLAKE
12 SERVICES, LLC d/b/a WESTLAKE
13 FINANCIAL SERVICES
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28